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DEC 17 2010  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY  
BY

HONORABLE JAMES L. ROBERT



10-CV-01486-ORD

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

RHONDA M. MESA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

ZYMOGENETICS, INC., BRUCE L.A.  
CARTER, JAMES A. HARPER, DAVID I.  
HIRSH, LARS FRUERGAAARD  
JORGENSEN, JONATHAN S. LEFF,  
DAVID H. MACCALLUM, A. BRUCE  
MONTGOMERY, KURT A. NIELSEN,  
EDWARD E. PENHOET, DOUGLAS E.  
WILLIAMS AND BRISTOL-MYERS  
SQUIBB COMPANY,

Defendants.

Case No. 2:10-CV-01486-JLR

CLASS ACTION

**STIPULATION AND [PROPOSED]  
ORDER FURTHER EXTENDING  
DEFENDANTS' TIME TO RESPOND  
TO COMPLAINT**

**NOTE ON MOTION CALENDAR:  
Friday, December 17, 2010**

STIPULATION

WHEREAS, on September 10, 2010, three lawsuits challenging the acquisition of ZymoGenetics, Inc. ("ZymoGenetics") by Bristol-Myers Squibb Company ("Bristol") were filed in King County Superior Court, and a fourth was filed shortly thereafter;

WHEREAS, all four cases were later consolidated before the Honorable Mary Yu into *In re ZymoGenetics, Inc. S'holder Litig.*, Lead Case No. 10-2-32389-9 SEA (Wash. Super. Ct.) (the "State Action");

STIPULATION AND [PROPOSED] ORDER OF  
EXTENSION - 1  
Case No. 2:10-CV-01486-JLR

FENWICK & WEST LLP  
1191 SECOND AVENUE, 10<sup>TH</sup> FLOOR  
SEATTLE, WASHINGTON 98101  
telephone (206) 389-4510  
facsimile (206) 389-4511

1 WHEREAS, on September 15, 2010, the above-captioned case (the "*Mesa* Action") was  
2 filed in this Court challenging the acquisition of ZymoGenetics by Bristol and alleging that the  
3 Schedule 14D-9 Recommendation Statement (the "14D-9") filed by ZymoGenetics with the  
4 Securities and Exchange Commission contained material omissions;

5 WHEREAS, on September 17, 2010 an amended complaint was filed in *Mesa* Action  
6 adding a claim under Sections 14(d)(4) and 14(e) of the Securities and Exchange Act alleging  
7 disclosure violations in the 14D-9;

8 WHEREAS, on September 23, 2010, another case, *Zhou v. Carter, et al.*, Case No. 2:10-  
9 cv-01538-MJP (W.D. Wash.), was also filed in this Court (together with the *Mesa* Action, the  
10 "Federal Actions");

11 WHEREAS, on September 29, 2010, ZymoGenetics filed an amended Schedule 14D-9  
12 Recommendation Statement (the "14D-9/A-3") which contains disclosures which Plaintiff  
13 believes addressed, in part, the material omissions alleged in the *Mesa* Action;

14 WHEREAS, on October 5, 2010, ZymoGenetics filed another amended Schedule 14D-9  
15 Recommendation Statement (the "14D-9/A-4") which contains additional disclosures which  
16 Plaintiff believes addressed, in part, the material omissions alleged in the *Mesa* Action;

17 WHEREAS, on October 12, 2010, the parties to the State Action entered into a  
18 Memorandum of Understanding to settle the State Action, pursuant to which the defendants  
19 acknowledged that they provided additional disclosures, recommended by the plaintiffs in the  
20 State Action, in the 14D-9/A-4 to ZymoGenetics shareholders, and the parties to the State  
21 Action agreed to stay all non-settlement-related proceedings;

22 WHEREAS, on October 12, 2010, Bristol completed its acquisition of ZymoGenetics,  
23 which is now a wholly-owned subsidiary of Bristol;

24 WHEREAS, on December 9, 2010, this Court entered an order vacating all deadlines and  
25 extending Defendants' time to respond to the complaint until December 22, 2010;

26 WHEREAS, on December 10, 2010, the Honorable Mary Yu entered an order, attached  
27 hereto as Exhibit 1 (the "December 10, 2010 Order"), preliminarily approving the settlement of

1 the State Action, directing notice to the class, which class encompasses the purported classes in  
2 the Federal Actions, and setting forth a schedule for final approval of the settlement, including  
3 a scheduled final approval hearing on March 11, 2011;

4 WHEREAS, the December 10, 2010 Order provides that all members of the proposed  
5 settlement class "are barred and enjoined from commencing, prosecuting, instigating, or in any  
6 way participating in the commencement or prosecution of any action or proceeding against any  
7 of the Released Persons in any court or tribunal asserting any of the Released Claims" (Ex. 1 at  
8 ¶ 12);

9 WHEREAS, it is Defendants' position that if Judge Yu approves the settlement and enters  
10 a final judgment in the State Action in conformity with the terms of the settlement, that  
11 judgment will release and bar all claims that have been or could have been alleged in the  
12 Federal Actions, including any claim for fees by Plaintiff's counsel;

13 WHEREAS, it is Plaintiff's position that the filing of the *Mesa* Action, which contained  
14 allegations of specific disclosure violations later addressed in the 14D-9/A-3 and the 14D-9/A-  
15 4, conferred a benefit upon ZymoGenetics shareholders and intends to move this Court for an  
16 award of attorneys' fees and expenses;

17 WHEREAS, NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED,  
18 between Plaintiff and Defendants, by and through their respective counsel, that (i) Defendants'  
19 time to answer, move or otherwise respond to the Complaint will be extended indefinitely;  
20 (ii) on or before April 22, 2011, the parties to this action will meet and confer regarding the  
21 continued progress of this action, if any; and (iii) within 15 days of the foregoing meet and  
22 confer, the parties will submit a joint status report or request for dismissal, as appropriate, to  
23 this Court.

1 RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of December, 2010.

2 **FENWICK & WEST LLP**

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23 *Fruergaard Jørgensen, Jonathan S. Leff, David H.*  
24 *MacCallum, A. Bruce Montgomery, Kurt Anker Nielsen,*  
25 *Edward E. Penhoet, and Douglas E. Williams*

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*Counsel for Plaintiff Rhonda M. Mesa*

**ORDER**

**IT IS SO ORDERED.**

Dated this 17<sup>th</sup> day of December, 2010.



HONORABLE JAMES L. ROBART  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on December 17, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 17<sup>th</sup> day of December, 2010.

By: /s/ Kit W. Roth

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## **Mailing Information for a Case 2:10-cv-01486-JLR**

### **Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

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### **Manual Notice List**

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)